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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,842	12/20/2001	Alain Moussy	065691-0265	1460

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EXAMINER	
BELYAVSKYI, MICHAIL A	
ART UNIT	PAPER NUMBER
1644	

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	10/022,842	MOUSSY ET AL.	
	Examiner	Art Unit	
	Michail A Belyavskyi	1644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-13 and 37*.

   Claim(s) withdrawn from consideration: *2,15-36 and 38*.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: Claims 1, 7 , 8 and 37 stand rejected under 35 U.S.C. 102(e) as being anticipated by WO 0212448 or by WO 01/85096 for the same reasons set forth in the previous Office Action, mailed on 09/22/04.
Applicant's arguments, filed 12/06/04 have been fully considered, but have not been found convincing.

Applicant asserts that neither WO 0212448 no WO 01/85096 teach the claimed limitation of step d). i.e. identifying a subset of compound that are unable to promote cell death.

Contrary to Applicant's assertion it is the Examiner position that WO'448 teaches a method of identifying and screening of compound capable for modulating survival, proliferation and function of mast cells that will not effect CD34+ expressing cells, comprising contacting purified mast cells with a test compound and assessing the ability of the test compound to modulate cell survival and/or proliferation (see entire document, Abstract and pages, 4, 9 and 13 in particular). The claimed step d) would be inherent property of the recited method of screening and identifying of a compound taught by WO'448.

WO'096 teaches a method for identifying compound capable of selectively targeting and eliminating mast cells without effecting other hematopoietic cells (see entire document, Abstract and pages 2 and 7 in particular). WO'448 teaches a method of culturing mast cells in vitro in suitable culture medium comprising IL-3 (see pages 1, 13 and 16 in particular). WO'448 teaches a method of identifying compound capable of selectively targeting and eliminating mast cells by monitoring mast cells viability i.e. proliferation or the induction of cell death or apoptosis in mast cells using various apoptosis assays, including trypan blue exclusion method (see page 9 and 15 in particular). WO'096 teaches that said compounds may be inhibitors of kinases (see page 19 in particular). The claimed step d) would be inherent property of the recited method of screening and identifying of a compound taught by WO'096.

The references teaching anticipates the claimed invention.

Claims 3-5, 9-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over WO 0212448 or over WO 01/85096 each in view of ATCC Catalog NOs: TIB-64;CRL-2034, CRL-2036, CRL-2037,TIB-152,CCL-213,CRL-1593.2;CCL-240, CRL-2258, CRL-2392 for the same reasons set forth in the previous Office Action, mailed on 09/22/04.

Applicant's arguments, filed 12/06/04 have been fully considered, but have not been found convincing.

Applicant asserts that since primary references WO 0212448 and WO 01/85096 are not prior art, it can not be used in 103 (a) rejections.

Contrary to Applicant's assertion as has been discussed, supra, it is the Examiner position that WO 0212448 and WO 01/85096 are prior art under 35 U.S.C. 102 (e).

The teaching of WO 0212448 or WO 01/85096 has been discussed, supra.

The claimed invention differs from the reference teaching in that the WO 0212448 or WO 01/85096 does not teach: a specific mast cells, as recited in claim 3; or specific other hematopoietic cells as recited in claim 4; a specific concentration of compounds as recited in claims 5 and 6; a specific concentration of IL-3 in a culture media as recited in claim 12 and specific method of detecting cell death as recited in claims 9-11.

ATCC Catalog NOs: TIB-64;CRL-2034, CRL-2036, CRL-2037,TIB-152,CCL-213,CRL-1593.2;CCL-240, CRL-2258, CRL-2392 teach that mast cells lines as recited in claim 3 and hematopoietic cells as recited in claim 4 are well known and commercially available.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the teaching of ATCC Catalog NOs: TIB-64;CRL-2034, CRL-2036, CRL-2037,TIB-152,CCL-213,CRL-1593.2;CCL-240, CRL-2258, CRL-2392 to those of WO 0212448 or WO 01/85096 to obtain a claimed method for identifying compound capable of depleting mast cells, wherein mast cells lines as recited in claim 3 and hematopoietic cells as recited in claim 4.

One of ordinary skill in the art at the time the invention was made would have been motivated to do so, because it is clear that both the prior art and applicant used similar approaches to specifically target and deplete only mast cells without effecting other hematopoietic cells. It would be immediately obvious to one of ordinary skill in the art at the time the invention was made to test if the compounds identified by the methods taught by WO 0212448 or WO 01/85096 that can specifically target and deplete mast cells without effecting other hematopoietic cells would also be able to deplete a specific strain of mast cells, as recited in claim 3 that are well known and commercially available, as taught by ATCC Catalog NOs: TIB-64;CRL-2034, CRL-2036, CRL-2037, with out effecting a specific other hematopoietic cells, as recited in claim 4, that are well known and commercially available, as taught by ATCC Catalog NOs: TIB-152,CCL-213,CRL-1593.2;CCL-240, CRL-2258, CRL-2392. When the prior art method is the same as a method described in the specification, it can be assumed the method will obviously perform the claimed process absent a showing of unobvious property of the recited cell stains. The strongest rationale for combining references is a recognition, expressly or impliedly in the prior art or drawn from a convincing line of reasoning based on established scientific principles or legal precedent, that some advantage or expected beneficial result would have been produced by their combination. In re Semaker. 217 USPQ 1, 5 - 6 (Fed. Cir. 1983). See MPEP 2144.

From the combined teaching of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

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